

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed January 29, 2003 (the "Office Action"). Applicants respectfully request reconsideration and favorable action in this case.

Drawings

Applicants note with appreciation the approval of corrected drawings filed by Applicants on November 14, 2003.

Section 103 Rejections

The Office Action rejects Claims 1-24 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,483,522 to Derby et al. ("*Derby*"). Applicants respectfully traverse these rejections for the reasons discussed below.

Claim 1 of the present application recites:

A method for providing an internal topology of a node within a network, comprising:

determining asymmetric connections between traffic bearing components in a network node;

determining an intranode connectivity between the traffic bearing components based on the asymmetric connections;

distributing a model of the node indicative of the intranode connectivity to a disparate node in a network with the node; and

using the model at the disparate node in determining a routing path through the network.

The Office Action states that:

Derby does not disclose the connections between the traffic bearing components as asymmetric. One skilled in the art would recognize that bidirectional connections are often asymmetric in order to accommodate a larger capacity in one direction. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have asymmetric connections between traffic bearing components in the invention of Derby.

See Office Action, ¶ 5. In response to Applicants' argument that it would not have been obvious to combine the teachings of *Derby* with the suggested knowledge of one skilled in

the art as contended by the Examiner, the Office Action states that U.S. Patent No. 6,262,976 issued to McNamara ("*McNamara*") discloses "having asymmetric connections in a network in order to flexibly accommodate the network traffic (col. 20, lines 33-39)." *See* Office Action, ¶ 1. However, the cited portion of *McNamara* states that "[t]here must be an inbound and an outbound path capable of reaching the source [node]. Bi-directional communication over the same link is NOT required. This allows for unbalanced loading." *See McNamara*, col. 20, lines 33-39 (*emphasis in original*). This portion of *McNamara* does not support, and is in direct conflict with, the statement in the Office Action that "[o]ne skilled in the art would recognize that bidirectional connections are often asymmetric in order to accommodate a larger capacity in one direction," because *McNamara* states that it is the lack of a requirement for bidirectional communication over the same link in *McNamara* that allows for unbalanced loading. Thus, *McNamara* fails to provide the necessary evidence to support the statement in the Office Action that one skilled in the art would recognize that bidirectional connections are often asymmetric in order to accommodate a larger capacity in one direction.

Moreover, the relevant portion of *McNamara* specifically teaches away from *Derby*, the base reference for the rejection. *Derby* specifically states that its links "are bidirectional in that they provide transmission capacity in both directions between the interconnected nodes and subnodes." *See Derby*, col. 6, line 66 – col. 7, line 2. As discussed above, *McNamara* indicates that it is the lack of bidirectional communication that allows for unbalanced loading. Thus, it would not be obvious to one skilled in the art to utilize the lack of bidirectional communication teachings of *McNamara* to support using asymmetric connections with the bidirectional communication of *Derby*.

Therefore, the Office Action has not cited language in any reference or within information commonly known to those skilled in the art that provides the necessary motivation or suggestion to combine *Derby* with the suggested knowledge of one skilled in the art.

Furthermore, the Office Action states that:

One skilled in the art would recognize that bidirectional connections are often asymmetric in order to accommodate a larger capacity in one direction. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have asymmetric connections between traffic bearing components in the invention of Derby.

See Office Action, ¶ 5. However, simply stating the standard of obviousness is not sufficient to establish the required motivation to combine the references. See *In re Denis Rouffet*, 1998 WL 400169 (Fed. Cir.). Moreover, broad conclusionary statements by the Examiner regarding the teaching of multiple references standing alone, are not "evidence." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). Instead, the Examiner must explain the "specific understanding or principle within the knowledge of the skilled artisan that would motivate... the combination." *Id.* "Combining prior art references without the required evidence of a suggestion or motivation simply makes the Applicants' disclosure a blueprint for piecing together the prior art to defeat patentability, the essence of hindsight. Federal Circuit case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the suggestion or motivation to combine prior art references." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999); *C.R. Bard, Inc. v. M3 Sys., Inc.*, 48 USPQ.2d 1225, 1232 (Fed. Cir. 1998); *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983). The Examiner must identify specifically the reasons one of ordinary skill in the art would have been motivated to select the references and combine them.¹ Although evidence of suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, the range of sources available does not diminish the requirement for actual evidence. The Federal Circuit has confirmed that conclusory "it would have been obvious" statements are not evidence. Thus, the Office Action's suggestion that it would have been obvious to combine the teachings of *Dewey* with the suggested knowledge of one skilled in the art does not constitute evidence. If the Examiner is relying on "common knowledge" or "well known" art in support of his rationale for combining the references, the

¹ The showing must be clear and particular. See, e.g., *C.R. Bard*, 48 USPQ.2d at 1232. Where the Examiner does not explain the "specific understanding or principle within the knowledge of a skilled artisan" that would motivate one with no knowledge of the applicant's claimed invention to make the combination, the Federal Circuit infers that the Examiner selected the references with the assistance of hindsight. *In re Rouffet*, 149 F.3d 1350, 1358 (Fed. Cir. 1998).

Examiner is requested to produce a reference in support of his position pursuant to M.P.E.P. § 2144.03. If the Examiner is relying on personal knowledge to supply the required motivation or suggestion to combine, Applicants respectfully request that the Examiner produce an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.

Applicants additionally note that *Derby* teaches away from using asymmetric connections between its intranode traffic bearing components. *Derby* discloses a routing diagram and routing field for a message from a source node 70 to a subnode 81 of a destination node 72 via subnodes 75 and 79. *See Derby*, Figure 8 and col. 9, lines 23-55. *Derby* also discusses a reverse path for routing a message from subnode 81 of destination node 72 to source node 70. *See id.*, col. 9, lines 57-62. In this discussion, *Derby* indicates that when reverse path accumulation is in effect, the original routing path is merely reversed such that the message travels from subnode 81 to node 70 via subnodes 79 and 75. *See id.* and Table 1. Thus, the reverse field discussion in *Derby* teaches away from using asymmetric connections, because using asymmetric connections would lead to a different optimal routing path from a destination to a source as opposed to the mere reversal of the original path between the source and the destination taught by *Derby*.

For at least these reasons, Applicants respectfully submit that Claim 1 is patentable over the cited art and request that the rejection of Claim 1 be withdrawn.

Claims 2-8 each depend from independent Claim 1. Therefore, Applicants respectfully submit that Claims 2-8 are patentable over the cited art, for example, for the same reasons discussed above with regard to Claim 1 and request that the rejection of Claims 2-8 be withdrawn.

The Office Action rejects Claim 9 using the same obviousness rejection used to reject Claim 1. *See Office Action*, ¶ 5. However, as discussed above with regard to Claim 1, there is no required motivation to combine *Derby* with the suggested knowledge of one skilled in the art as contended by the Office Action, and *Derby* teaches away from the use of asymmetric connections in its intranode links. For at least these reasons, Applicants

respectfully submit that Claim 9 is patentable over the cited art and request that the rejection of Claim 9 be withdrawn.

Claims 10-16 each depend from independent Claim 9. Therefore, Applicants respectfully submit that Claims 10-16 are patentable over the cited art, for example, for the same reasons discussed above with regard to Claim 9 and request that the rejection of Claims 10-16 be withdrawn.

The Office Action rejects Claim 17 using the same obviousness rejection used to reject Claim 1. *See* Office Action, ¶ 5. as discussed above with regard to Claim 1, there is no required motivation to combine *Derby* with the suggested knowledge of one skilled in the art as contended by the Office Action, and *Derby* teaches away from the use of asymmetric connections in its intranode links. For at least these reasons, Applicants respectfully submit that Claim 17 is patentable over the cited art and request that the rejection of Claim 17 be withdrawn.

Claims 18-24 each depend from independent Claim 17. Therefore, Applicants respectfully submit that Claims 18-24 are patentable over the cited art, for example, for the same reasons discussed above with regard to Claim 17 and request that the rejection of Claims 18-24 be withdrawn.

Conclusions

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims.

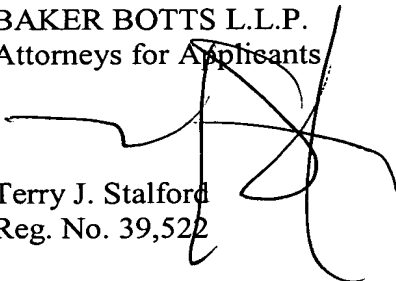
If the present application is not allowed and/or if one or more of the rejections is maintained, Applicants hereby request a telephone conference with the Examiner and further request that the Examiner contact the undersigned attorney to schedule the telephone conference.

No fee is believed to be due. However, the Commissioner is hereby authorized to charge any fees to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: April 29, 2003

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